

Thakur (Migration) [2020] AATA 5983 (24 November 2020)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mr Ashwin Singh Thakur
CASE NUMBER:	1907631
DIBP REFERENCE(S):	BCC2017/3515493
MEMBER:	Antoinette Younes
DATE:	24 November 2020
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa.

Statement made on 24 November 2020 at 9:54am

CATCHWORDS

MIGRATION – Cancellation – Student (Temporary) (Class TU) visa – Subclass 500 visa – incorrect information provided – bogus document – genuine access to funds – decision under review affirmed

LEGISLATION

Migration Act 1958, ss 5, 101, 107, 109

Migration Regulations 1994 (Cth), cl 500.214

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to cancel the applicant's Subclass 500 (Student) visa under s.109(1) of the *Migration Act 1958* (the Act).
2. The delegate cancelled the visa on the basis that the applicant did not comply with ss.101 and 103 of the Act. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. The applicant appeared before the Tribunal by telephone on 11 November 2020 to give evidence and present arguments. The Tribunal exercised its discretion to hold the hearing by telephone. The hearing was held during the COVID-19 pandemic. The Tribunal determined it was reasonable to hold a hearing by telephone, having regard to the nature of this matter and the individual circumstances of the applicant. The Tribunal also had regard to the Tribunal's objective of providing a mechanism of review that is fair, just, economical and quick, and the delay to the matter if the hearing was not to be conducted by telephone.
4. The applicant was represented in relation to the review by his registered migration agent.
5. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

6. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss.101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.
7. The exercise of the cancellation power under s.109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s.107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s.107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
8. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s.107 and that the notice issued under s.107 complied with the statutory requirements.

Was there non-compliance as described in the s.107 notice?

9. The issue before the Tribunal is whether there was non-compliance in the way described in the s.107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled. The non-compliance identified and particularised in the s.107 notice was non-compliance with ss.101 and 103 of the Act.
10. Section 101 provides:
 11. *Visa applications to be correct*

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and*
- (b) no incorrect answers are given or provided.*

12. Section 103 provides:

Bogus documents not to be given

13. *A non-citizen must not give, present, produce or provide to an officer, an authorised system, the Minister, the Immigration Assessment Authority, or the Tribunal performing a function or purpose under this Act, a bogus document or cause such a document to be so given, presented, produced or provided*

14. Section 5(1) defines a bogus document as follows:

15. ***bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- 16. (a) *purports to have been, but was not, issued in respect of the person; or*
- 17. (b) *is counterfeit or has been altered by a person who does not have authority to do so; or*
- 18. (c) *was obtained because of a false or misleading statement, whether or not made knowingly.*

19. In the course of the hearing, the Tribunal discussed with the applicant information contained in the delegate's decision record, a copy of which the applicant provided to the Tribunal. Relevantly, the Tribunal referred to the application for a Student (subclass 500) visa, lodged by the applicant on 12 July 2017 to undertake a Master of Management for Engineers at Central Queensland University. As part of this application the applicant completed Form *Application for a Student visa* (application form).

20. The Decision record indicates that:

- a) On page 8 of the application form, asking "*Do all applicants in this application confirm that they each have access to sufficient funds to support themselves for the total period stay in Australia and understand that further evidence of funds may also be requested?*", the applicant answered "Yes". In response to "*Show how each applicant included in the application will support themselves in Australia to meet living, tuition and school cost*", the applicant replied "*Financial support from an individual*".
- b) Under the heading "*Financial support from an individual*", the applicant indicated that the funds would be provided by his parent who is obtaining a loan of AU\$46000 from the State Bank of India.
- c) On page 13 of the application form, under the heading "*Student declarations*" and "*WARNING; Giving false or misleading information is a serious offence*", the applicant confirmed that he had read and understood the information provided on the website (www.studyinaustralia.gov.au) regarding living and studying in Australia, that he had access to sufficient funds to support himself for the total period of stay in Australia, and that he understood that he may be requested to provide further evidence of funds.
- d) In support, the applicant provided a letter from the State Bank of India, Zahirabad branch, dated 6 June 2017, confirming a loan of Rs. 23,000 to meet the education

and living expenses to cover the applicant to study the Master of Management for Engineers at the CQ University, Sydney. The letter contained the financial institution's PIN, fax number, email address, branch stamp and signature of the authorised person.

- e) Based on the information provided, the applicant was granted the visa on 4 September 2017.
- f) Subsequent to the grant of the visa, the Department undertook integrity checks concerning the letter of the State Bank of India dated 6 June 2017. On 25 September 2017, the Department emailed the address listed on the letter, *sbi.07951@sbi.co.in*, requesting confirmation about the loan. A copy of the letter was attached to the email. On 25 September 2017, the branch manager emailed the Department from *sbi.07951@sbi.co.in* and stated that the Branch had no records of the loan. The manager further confirmed that the fax number, branch stamp, and signature of the authorised person are not related to their branch.

21. Notice of Intention to Consider Cancellation (NOITCC)

22. The Department formed a view that it appeared that the applicant had provided incorrect information in the visa application and that the letter from the State Bank of India dated 6 June 2017 is a bogus document. On 12 March 2019, the Department sent to the applicant a NOITCC, to which the applicant responded on 26 March 2019. In his response by way submissions of his representative and a signed statement, the applicant did not agree that there has been non-compliance. He indicated that:

- The application was lodged by a well-known education consultant in India. The consultant explained the whole process including the financial requirements. The consultant advised that he would need AU\$50,000 and that the applicant's finance would not be a problem.
- He discussed his financial situation, including that his father had AU\$13,000 in savings and was willing to obtain a bank loan secured by the father's property, valued at AU\$34,000.
- He approached the State Bank of India and applied for the loan. The branch manager confirmed that he could approve a bank loan of AU\$22,000 AUD. Given his father's savings and that the loan would not be sufficient for the visa purpose, he did not accept the loan offer. Two days later, his consultant advised him that the loan had been approved.
- On receiving the NOITCC, his father went to the bank and he was informed that no such loan had been approved. The applicant contacted the education agent who did not take his calls. His father also went to the consultancy on various occasions with no success. His father has consulted a lawyer and is planning to take legal action against the education consultant.
- Everything happened without his knowledge.

23. The applicant provided several documents such as bank statements for his father and brother, pension payments for his father, and payslips for his brother.

24. The applicant gave evidence that he is remorseful about what happened and that he accepts that he should be more responsible. He said he approached a consultant in India who made the arrangements for the loan. He stated that he had 'no idea' how that happened but he

takes responsibility. The Tribunal questioned the applicant at length about his version of events and he continued to state that he had 'no idea'. He stated that his father and the agent had discussions prior to lodgement of the visa application and that perhaps his father saw the documents. He stated that he did not know what took place and that the agent got approval. He stated that he is a genuine student and that he had completed his Master's degree last year.

25. The Tribunal indicated that the Tribunal is having difficulties accepting his version of events. He said "OK" and that perhaps his father knows more about the document which was obtained by the agent. He said his father and the agent had discussions and that the agent arranged all the documents. He said he did not make arrangements for the documents and that it was the agent who arranged all.
26. The Tribunal indicated that his oral evidence is somewhat different to earlier versions and explanations where he essentially said that the applicant himself had approached the bank manager. He stated that he and the agent had discussions. He said he does not know how the loan was 'approved' as he was advised by the agent. He reiterated that he does not know the details of how the loan was obtained, that he has 'no idea' and he had no intention to provide incorrect information or a bogus document. He however accepted that the document is bogus but continued to contend that at the time of the visa application, he did not know.
27. The Tribunal observes that in his Statement dated 15 March 2019 and signed on 26 March 2019, the applicant stated:

28. ...my education consultant explained me the whole process and most importantly finance requirements. I explained them our finance situation. My father had 650,000 INR (13,000 AUD) in his savings, and were willing to opt for bank loan against our property. We got our property evaluated back in 2017 and it was valued around 17,00,000 INR (34,000 AUD). With all my documents, and finance status, my consultant was confident that finance won't be a problem at all and so were we. The next day, we went to the State Bank of India, and applied for loan. The education consultant told me that we would need approximately 50, 000AUD to apply visa, as a part of requirements. We consulted the branch manager, and by looking at the documents, he confirmed that he can approve bank loan worth 22,000 AUD. He wouldn't approve more. At this point of time we didn't accept his offer as, 22,000 of loan approval and 15,000 of savings would sum up to 37,0000 AUD, and that won't be enough to apply for the student visa.

29. The Tribunal is of the view that the above version of events indicates that the applicant was involved, contrary to his oral evidence that he had no idea. The Tribunal did not find the applicant's evidence and explanations to be persuasive or convincing.
30. In any event, whether he knew of the provision of the incorrect information or the bogus document is not a requirement to enliven s.101(b) or s.103. Sections 98, 99, 100 and 111 provide:

31. 98 Completion of visa application

32. A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

33. *Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.*

100 Incorrect answers

34. *For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.*

111 Cancellation provisions apply whether or not non-compliance deliberate

To avoid doubt, sections 107, 108 and 109 apply whether the non-compliance was deliberate or inadvertent.

35. Although whether the applicant's actions were deliberate or inadvertent is not a requirement to enliven s.101(b) or s.103, this could nevertheless be relevant to the discretionary matters.
36. In consideration of the evidence as a whole, the Tribunal finds that the applicant provided the incorrect information in breach of s.101(b) in the visa application form in response to questions, asking *"Do all applicants in this application confirm that they each have access to sufficient funds to support themselves for the total period stay in Australia and understand that further evidence of funds may also be requested?"*, when the applicant answered "Yes". In response to *"Show how each applicant included in the application will support themselves in Australia to meet living, tuition and school cost"*, when the applicant replied *"Financial support from an individual"*. He also provided incorrect information under the heading *"Financial support from an individual"*, when he indicated that the funds would be provided by his parent who is obtaining a loan of AU\$46000 from the State Bank of India. The Tribunal further finds that the applicant breached s.103 when he provided a bogus document, namely, the letter claimed to be from the State Bank of India dated 6 June 2017. On the evidence, the Tribunal is satisfied that the letter is bogus in that it is counterfeit or has been altered by a person who does not have authority to do so.
37. For those reasons, the Tribunal finds that there was non-compliance with ss.101 and 103 by the applicant in the way described in the s.107 notice.

Should the visa be cancelled?

38. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s.107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s.109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s.109(2).
39. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s.107 notice about the non-compliance, and have regard to any prescribed circumstances: s.109(1)(b) and (c). The prescribed circumstances are set out in r.2.41 of the Regulations. Briefly, they are:

- ***the correct information***

40. The correct information is that the State Bank of India dated 6 June 2017 is a bogus document in that it is counterfeit or has been altered by a person who does not have authority to do so.
41. The correct information is that the applicant provided an incorrect answer on page 8 of the application form, asking "*Do all applicants in this application confirm that they each have access to sufficient funds to support themselves for the total period stay in Australia and understand that further evidence of funds may also be requested?*", when the applicant answered "Yes". The applicant also provided incorrect answers in response to "*Show how each applicant included in the application will support themselves in Australia to meet living, tuition and school cost*", when he replied "*Financial support from an individual*" and under the heading "*Financial support from an individual*", when he indicated that the funds would be provided by his parent who is obtaining a loan of AU\$46000 from the State Bank of India. The correct information is that there was no loan of any amount from the State Bank of India.
42. The Tribunal gives this aspect significant weight in favour of cancellation.

- ***the content of the genuine document (if any)***

43. The State Bank of India dated 6 June 2017 is a bogus document. The Tribunal gives this aspect significant weight in favour of cancellation.
44. There is no other 'genuine' document relevant to the cancellation.

- ***whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document***

45. In order to be granted the student visa, the applicant had to meet all relevant criteria, including:

500.214

46. **(1)** *The applicant will have genuine access to funds of a kind mentioned in subclause (2) and, if subclause (3) applies, subclause (3).*

47. **(2)** *While the applicant holds the visa, sufficient funds will be available to meet:*

48. *(a) the costs and expenses of the applicant during the applicant's intended stay in Australia...*

49. The applicant's claims that funds would be provided by his parent who is obtaining a loan of AU\$46000 from the State Bank of India and the document from the State Bank of India are important and relevant answers. Similarly, the document provided by the applicant to support the student visa application in demonstrating that he had the financial capacity for his stay in Australia, that is to meet cl.500.214. The Tribunal is satisfied that the answers provided in the visa application and the document from the State Bank formed integral aspects of the delegate's assessment in determining the applicant's financial capacity.
50. In submissions, it was noted that Tribunal ought to consider the fact that the applicant's father has provided financial support for the applicant's study and living expenses in Australia, which is plausible.

51. The Tribunal is satisfied that the decision to grant the student visa was based, wholly or partly, on the incorrect information and the bogus document.
52. The Tribunal gives this aspect significant weight in favour of cancellation.

- ***the circumstances in which the non-compliance occurred***

53. The circumstances of non-compliance occurred when the applicant provided incorrect answers by claiming that funds would be provided by his parent who is obtaining a loan of AU\$46000 from the State Bank of India and the document from the State Bank of India. For the reasons outlined above, the Tribunal has found that the document is a bogus document as defined in s.5(1) of the Act and that the answers are incorrect.
54. The Tribunal has carefully considered the applicant's responses to the NOITCC, the submissions and oral evidence. On balance, the Tribunal is satisfied that the applicant has intentionally provided the incorrect information and the bogus document in order to satisfy the visa criteria including cl.500.214.
55. The Tribunal gives this aspect significant weight in favour of cancellation.

- ***the present circumstances of the visa holder***

56. The applicant provided to the Department and the Tribunal the following relevant documents to support his submissions that the visa should not be cancelled:
- Reference letter of Robert Kennedy, Venitas (Trading as Domino's Redfern), undated relating to the applicant's employment with Domino's.
 - Reference letter of Abdul Azeez, Head Master, Tawakkal High School, undated, concerning the applicant's attendance and good academic performance at school between 2002-2009.
 - Academic transcript from Central Queensland University, dated 26 March 2019.
 - Study confirmation statement from Central Queensland University, dated 26 March 2019, relating to course commencement date of 6 November 2017 and expected completion date of 5 July 2019.
 - Reference letter of A. Ravi Kumar, Head of Institute, SSJ Engineering College, Hyderabad, dated 22 March 2019.
 - Reference letter from Hyaline Enviro Engineers Pvt. Ltd, undated concerning the applicant's employment between July 2015 and May 2017.
 - Reference letter from Christian Borutzki, friend, dated 18 October 2020.
 - Employment letter from Evan Hanimikali, Operations Manager, Hands on Café & Pizza Pty Ltd, dated 3 July 2020.
 - Undated letter from landlord referring to the applicant being a good tenant from 1 March 2019 to 30 September 2020.
 - Reference letter (personal and academic) dated 16 October 2020 from Dr Sandra Khan Mahri, Lecturer at Central Queensland University.

- Reference letter (personal and academic) undated from Dr Gurcharan Singh, Sessional Academic at Central Queensland University.
- Certificate for the completion of the Master of Management for Engineers course, dated 25 November 2019, and academic transcript issued 11 December 2019. Receipts for payment of fees, including a letter from Sandeep Nukala dated 19 October 2020 relating to payment of fees by credit card on behalf of the applicant.
- Blood donor's card.

57. In submissions, the representative noted that the applicant has resided in Australia for 36 months and has developed strong social and personal ties to Australia. The representative noted that the applicant qualifies to be assessed as a professional fitting into Unit Group 23392 - *this unit group covers occupations that are in high demand in Australia...He has worked on part time basis for two employers who both attested his professional contribution as well as personal character.*

58. The Tribunal accepts that the applicant has completed the Master of Management for Engineers course supporting his claim that he is a genuine student. His visa would have expired (but for the cancellation) on 5 September 2019.

59. The applicant gave evidence that he would like to undertake further studies in Australia, a Diploma of Automobile Engineering which offers good opportunities for practical skills. He works part-time and has a "casual" girlfriend whom he sees once or twice a week. They do not live together. His parents and siblings live in India. He has a cousin in Melbourne.

60. Although the applicant described his relationship as "casual", the Tribunal has given it some weight in his favour as well as his stated intention to undertake further studies in Australia. The Tribunal accepts that the applicant is employed and that cancellation would mean that he would no longer benefit from those employment opportunities as well as potentially qualifying for the Unit Group 23392.

61. The applicant has been in Australia for about 3 years. The evidence before the Tribunal indicates that he has established friendships, academic and employer support.

62. The Tribunal gives this aspect weight in the applicant's favour.

- ***the subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act***

63. The applicant responded to the NOITCC conceding that he knows now that the State Bank of India document is a bogus document. He has however maintained that he did not know of or have anything to do with the provision of the incorrect information or the bogus document. For the stated reasons, the Tribunal has not accepted those contentions.

64. The Tribunal gives some weight favourable to the applicant for his cooperation with the cancellation process.

65. However, on balance, the Tribunal gives this aspect weight in favour of cancellation.

- ***any other instances of non-compliance by the visa holder known to the Minister***

66. There is no evidence of any other instances of non-compliance.

67. The Tribunal gives this aspect neutral weight.

- ***the time that has elapsed since the non-compliance***

68. The non-compliance occurred when the applicant lodged the student visa application on 12 July 2017. The applicant has completed his course and has formed friendships and employment connections.

69. The Tribunal gives this aspect weight in favour of the applicant.

- ***any breaches of the law since the non-compliance and the seriousness of those breaches***

70. There is no evidence of any breaches of the law.

71. The Tribunal gives this aspect neutral weight.

- ***any contribution made by the holder to the community.***

72. The Tribunal accepts that the applicant has been employed at Domino's and Café & Pizza, that he has aspirations to work as a Scout Australia volunteer, that he delivered food to those in quarantine, and that he has been a regular blood donor in India and in Australia.

73. The Tribunal gives this aspect weight in the applicant's favour.

74. While these factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedural Advice Manual) PAM3 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.

- ***whether there are mandatory legal consequences, such as whether cancellation would result in the visa holder being unlawful and subject to detention, or whether indefinite detention is a possible consequence of cancellation, or whether there are provisions in the Act which prevent the person from making a valid visa application without the Minister's intervention***

75. The cancellation of the applicant's visa could result in the applicant's detention and potential removal from Australia. To minimise or avoid those potential consequences, the applicant could voluntarily depart Australia.

76. The applicant would also be impacted by s.48 of the Act which means that he may face difficulties in applying for any further visas in Australia and in being granted an Australian visa.

77. The Tribunal considers potential detention and removal from Australia as well as the s.48 bar to be intended legislative consequences and in the applicant's case, the Tribunal gives this aspect neutral weight.

- ***whether there would be consequential cancellations under s.140***

78. There is no evidence that the cancellation of the applicant's visa would result in the cancellation of the visa of another person, pursuant to s.140.

79. The Tribunal gives this aspect neutral weight.
- ***whether any international obligations would be breached as a result of the cancellation, such as non-refoulement obligations, family unity principles or the obligation to consider the best interests of the child.***
80. There is no information before the Tribunal to suggest that Australia would be in breach of any of its international obligations, such as non-refoulement obligations in the event of cancellation.
81. The Tribunal gives this aspect neutral weight.
- ***any other relevant matters, including the degree of hardship that may be caused to the visa holder and any family members.***
82. The Tribunal is satisfied that the visa cancellation would potentially result in emotional, psychological, and financial hardship to the applicant. The applicant would not be able to pursue any further studies in Australia unless granted another visa, but as discussed above, he would face difficulties. He has however completed the course for which the visa was granted.
83. The Tribunal gives those matters weight in the applicant's favour.
84. There are no other matters requiring consideration.
85. **Concluding remarks**
86. The Tribunal has carefully considered the material before it individually and cumulatively. The provision of incorrect information in a visa application and a bogus document is a serious matter. The legislature and policy makers intended adverse consequences, such as cancellation. There are aspects in the applicant's favour including hardship, present circumstances and his contribution to the Australian community. However, on balance, the Tribunal is satisfied that the evidence weighs heavily in favour of cancellation.
87. Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s.107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

88. The Tribunal affirms the decision to cancel the applicant's Subclass 500 (Student) visa.

Antoinette Younes
Senior Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document***, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: ***Bogus document*** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and
 - (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
 - (c) stating that the Minister will consider cancelling the visa:

- (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.